

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.223 OF 2022

Nilkanth CHS Ltd. (Prop.) & Ors.] .. Petitioners
vs.
M/s.Navkar Construction Company & Ors.] .. Respondents

Mr.Pritesh Burad a/w Samita Vaviya, Twinkle Gadhiya, Devika Kakoo
i/b Pritesh Burad Associates for the Petitioners.

Mr.Ankit Lohia a/w Paluck Bengali i/b Tushar Goradia for Respondent
Nos.4 to 6.

Ms.Sayal Apte a/w Shreya Shah i/b P.G. Lad for Respondent No.7.

CORAM : BHARATI DANGRE, J

DATE : 17th JANUARY, 2023.

P.C.

1] On 09.01.2023, my attention was invited to the Consent Terms signed by Respondent Nos.4 to 6 alongwith their Advocates and members of the proposed housing society i.e. the Petitioners.

It was recorded that the Consent Terms clearly admitted the liability which Respondent No.6 had undertaken to discharge its obligations which included timely completion of construction work and of obtaining occupation certificate, within the period stipulated.

Apart from this, consensus was arrived over the payment of outstanding amount due and payable to the tenants by way of transit rent/compensation by issuance of post dated cheques.

However, it was noticed that, though the Petition was disposed off in terms of the Consent Terms and consensus expressed therein, it was kept pending for compliance.

2] Thereafter, it was noticed that, there was no compliance of the undertakings given in the Consent Terms and hence in the order dated 09.01.2023 it was recorded that the same would amount to breach of the undertaking and the Respondents are liable for being punished under the Contempt of Courts Act, upon appropriate procedure being followed.

Accordingly, Respondent Nos.4 to 6 were directed to remain present before the Court.

3] On 16.01.2023, Respondent No.4 - Partner of Respondent No.5 and Director of Respondent No.6 was present in the Court.

Respondent No.4, through his counsel made certain commitments and showed his willingness to abide by the Consent Terms filed earlier and therefore, I deemed it appropriate to adjourn the proceedings today for the Affidavit being filed by Respondent No.4.

4] In compliance, Affidavit sworn by Respondent No.4-Mr.Rahul Shah on 17.01.2023 is placed on record.

The opening paragraph of the Affidavit state that the same is filed in compliance of the directions issued by this Court on 16.01.2023.

It specifically record that Respondent Nos.4 to 6 shall get the Permanent Alternate Accommodation Agreement (PAAA) registered with 70 tenants in terms of Para 5 of the Affidavit.

Para 4 to 7 of the Affidavit read as under :

“4. The PAAA shall be registered by the Respondent Nos.4 to 6 on or before 2nd February 2023 which will be whole and sole responsibility of Respondent Nos.4 to 6. The petitioner shall cooperate for registration of the PAAA and make themselves available on such date as may be intimated to them on the previous evening.

5. Respondent Nos.4 to 6 shall register PAAA for 69 tenements and one deed of rectification. The terms of deed of rectification in respect of one (1) tenement shall be the same terms as the other PAAA.

6. There will capping of Rs.30,000/- per tenant i.e. for 70 Tenants as above. The same capping shall apply to the remaining tenants whose family nomination/heirship issue is pending before MHADA. However, the tenements which have been sold without the consent of the erstwhile landlord/ Respondent Nos.4 to 6 shall not be entitled to the benefit of these terms.

7. Respondent Nos.4 to 6 shall pay the agreed rent of the year 2022 as per Clause 11(a) of the Consent Terms dated 19th October 2022 on or before 27th January 2023 only by way of Pay order/demand draft which will be paid after deducting amount of Rs.30,000/- as agreed above.”

The contingency is also provided for in case, if cheque issued is bounced and it is stated that the Petitioners shall be compensated for the same by Respondents.

5] The Affidavit categorically state that all the terms and conditions stated in the Affidavit shall be binding upon all the parties and it shall not in any manner supersede the original consent terms dated 19.10.2022 except to the extent provided therein.

6] In the wake of Affidavit, the grievance of the members of the Petitioner-Society stand redressed as on today, with one aspect, which

I must clarify i.e. the effect that the Undertaking given in Para 7 shall not be extended to the tenants whose tenements have been sold to the third party, without the consent of landlord/ Respondent Nos.4 to 6.

7] Since the learned counsel for the Petitioners have expressed their satisfaction over the terms which are reduced into writing by Respondent No.4, I do not think that it is necessary to take any action against Respondent No.4.

It is, however, made clear that breach of the Undertaking stated on oath in the Affidavit dated 17.01.2023 shall be dealt with sternly.

8] CARBP No.223/2022 is disposed off in terms of the Consent Terms dated 19.10.2022 marked as 'X' for identification alongwith Affidavit filed by Respondent No.4 on 17.01.2023.

[BHARATI DANGRE, J]